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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/649,127

08/27/2003

Edward N. Barthell

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BOYLE FREDRICKSON S.C.  
840 North Plankinton Avenue  
MILWAUKEE, WI 53203

EXAMINER

RANGREJ, SHEETAL

ART UNIT

PAPER NUMBER

3686

NOTIFICATION DATE

DELIVERY MODE

06/09/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@boylefred.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/649,127	<b>Applicant(s)</b> BARTHELL, EDWARD N.	
	<b>Examiner</b> SHEETAL R. RANGREJ	<b>Art Unit</b> 3686	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 January 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Prosecution History Summary***

1. Claims 24-26 are withdrawn.
2. Claims 1-23 are pending.

### ***Affidavit***

3. Applicant has submitted an affidavit to remove Epler et al. (2003/0187615) as a reference applied under 35 U.S.C. § 103(a) in the previous Office Action. The affidavit filed on 15 March 2007 under 37 CFR 1.131 has been considered but is ineffective to overcome the Epler reference for the following reasons:

Where conception occurs prior to the date of the reference, but reduction to practice is afterward, it is not enough merely to allege that applicant or patent owner had been diligent. *Ex parte Hunter*, 1889 C.D. 218, 49 O.G. 733 (Comm'r Pat. 1889). Rather, applicant must show evidence of facts establishing diligence.

**In determining the sufficiency of a 37 CFR 1.131 affidavit or declaration, diligence need not be considered unless conception of the invention prior to the effective date is clearly established**, since diligence comes into question only after prior conception is established. *Ex parte Kantor*, 177 USPQ 455 (Bd. App. 1958).

The evidence submitted is insufficient to establish a conception of the invention prior to the effective date of the March 16, 2002 reference. While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another. Conception is more than a vague idea of how to solve a problem. The requisite means themselves and their interaction must also be comprehended. See *Mergenthaler*

*v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897). The presented article does not include each and every feature of the present claimed invention.

Applicant claims that he conceived of the invention in fall 2001 and constructively reduced the invention to practice by filing on 10/11/2002. Therefore, Applicant must show conception from prior to 3/26/2002. Applicant has failed to provide sufficient evidence of conception. Thus, the affidavit is deemed insufficient to overcome the Epler reference.

According to MPEP § 715.07, Applicant should specifically refer to each exhibit relied upon in the affidavit or declaration, in terms of what it is relied upon to show. The affidavit or declaration and exhibits must clearly explain which facts or data Applicant is relying on to show completion of his or her invention prior to the particular date. Vague and general statements in broad terms about what the exhibits describe along with a general assertion that the exhibits describe a reduction to practice “amounts essentially to mere pleading, unsupported by proof or a showing of facts” and, thus, does not satisfy the requirements of 37 CFR 1.131(b). *In re Borkowski*, 505 F.2d 713, 184 USPQ 29 (CCPA 1974). Applicant must give a clear explanation of the exhibits pointing out exactly what facts are established and relied on by Applicant. 505 F.2d at 718-19, 184 USPQ at 33. See also *In re Harry*, 333 F.2d 920, 142 USPQ 164 (CCPA 1964) (Affidavit “asserts that facts exist but does not tell what they are or when they occurred.”). A general allegation that the invention was completed prior to the date of the reference is not sufficient. *Ex parte Saunders*, 1883 C.D. 23, 23 O.G. 1224 (Comm'r Pat. 1883). Similarly, a declaration by the inventor to the effect that his or her invention was conceived or reduced to practice prior to the reference date, without a statement of facts demonstrating the correctness of this conclusion, is insufficient to satisfy 37 CFR 1.131.

In the remarks, Applicant argues in substance that the detailed Declaration provides support that the Applicant's invention was conceived and reduced to practice before the effective dates of the applied references. The Examiner respectfully submits that in considering evidence presented in the affidavits and declarations does not establish nexus between the claimed invention.

Moreover, Applicant has not demonstrated how the Exhibits and declarations provide a nexus to Applicant's recited claimed language. The examiner would like the Applicant to point-out and direct correlation between the claim language and the presented Exhibits.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-23 are rejected under 35 U.S.C. 102(e) as being anticipated by Reference A.

6. As per claim 1, Reference A teaches the method of detecting a bio-emergency:

a. Receiving patient health information at a plurality of health care facilities, the information being received at each facility via a user interface executed on at least one computer (page 3, paragraph 0030, lines 4-7);

- b. Transmitting, simultaneously with said receiving step, the patient health information to a monitoring computer within a bio-surveillance network (page 4, paragraph 0038, lines 1-3).
  - c. Compiling the patient health information on the monitoring computer to create compiled health data (page 3, paragraph 0030, lines 9-12; page 4 paragraph 0035, lines 1-15).
7. As per claim 2, the method of claim 1 is as described above. Reference A further teaches wherein the bio-surveillance network includes at least one regional repository that communicates directly with at least one of the health care facilities (page 2, paragraph 0019, lines 10-13). In light of the specification, the examiner interprets health officials to be the same as health care facilities.
8. As per claim 3, the method of claim 2 is as described above. Reference A further teaches wherein the regional repository is a regional health department (page 4, paragraph 0038, lines 1-3). In light of the specification, the examiner interprets the central database to be the same as a regional health department.
9. As per claim 4, the method of claim 2 is as described above. Reference A further teaches wherein the at least one regional repository includes a plurality of regional repositories (page 6, paragraph 0054, lines 1-3).
10. As per claim 5, the method of claim 4 is as described above. Reference A further teaches wherein said compiling step is performed at the regional repositories (page 4, paragraph 0038, lines 1-8). In light of the specification, the examiner interprets the central collecting computer to be the same as a regional repository.

11. As per claim 6, the method of claim 5 is as described above. Reference A further teaches communicating the compiled health data to at least one group including the regional repositories (page 6, paragraph 0041, lines 11-14 and lines 19-23) and a centralized recipient (page 3, paragraph 0030, lines 17-19).

12. As per claim 7, the method of claim 5 is as described above. Reference A further teaches the bio-surveillance network includes a centralized recipient that receives the compiled health care data from at least one of the regional repositories (page 3, paragraph 0030, lines 17-19).

13. As per claim 8, the method of claim 7 is as described above. Reference A further teaches comparing the compiled health data to a threshold (page 5, paragraph 0051, lines 8-12).

14. As per claim 9, the method of claim 8 is as described above. Reference A further teaches generating a warning signal in response to said comparing step (page 5, paragraph 0047, lines 5-10).

15. As per claim 10, the method of claim 9 is as described above. Reference A further teaches communicating the warning signal to at least one of a group including the health care facilities (page 5, paragraph 0048, lines 2-7), a law enforcement agency (page 3, paragraph 0030, line 19).

16. As per claim 11, the method of claim 10 is as described above. Reference A further teaches communicating the warning signal is performed automatically in response to said comparing step (page 5, paragraph 0048, lines 2-7).

17. As per claim 12, the method of claim 7 is as described above. Reference A further teaches the centralized recipient is the Centers for Disease Control (page 3, paragraph 0030, line 19).

18. As per claim 13, the method of claim 1 is as described above. Reference A further teaches wherein the patient health information includes triage information (page 3, paragraph 31, lines 1-3).

19. As per claim 14, the method of claim 13 is as described above. Reference A further teaches wherein the triage information includes symptom information (page 3, paragraph 31, lines 1-6).

20. As per claim 15, the method of claim 14 is as described above. Reference A further teaches the triage information includes a primary complaint (page 3, paragraph 31, lines 1-6).

21. As per claim 16, the method of claim 15 is as described above. Reference A further teaches the triage information includes a secondary complaint (page 3, paragraph 31, lines 1-9).

In light of the specification, the examiner interprets patient presenting symptoms is the same as a secondary complaint.

22. As per claim 17, the method of claim 14 is as described above. Reference A further teaches categorizing the symptom information (page 5, paragraph 0053, lines 8-18; page 6, paragraph 0054, lines 1-11). In light of the specification, the examiner interprets symptoms to be categorized if used to predict certain illnesses and injuries.

23. As per claim 18, the method of claim 1 is as described above. Reference A further teaches categorizing step includes generating syndromic data (page 5, paragraph 0051, lines 3-6).

24. As per claim 19, the method of claim 1 is as described above. Reference A further teaches said receiving step is performed using proprietary software (page 3, paragraph 0030, lines 4-9). In light of the specification, the examiner interprets the patient information is being captured by the software.



25. As per claim 20, the method of claim 1 is as described above. Reference A further teaches wherein said transmitting step is implemented via the Internet (page 4, paragraph 0041, lines 16-19).
26. As per claim 21, Reference A teaches a method of detecting a bio-emergency:
- a. Receiving individual triage patient health information at a plurality of health care facilities from each of a plurality of patients (page 3, paragraph 0031, lines 1-5).
  - b. On a patient-by-patient basis, electronically recording triage data for that patient in a computer of the associated health care facility, the triage data for each patient containing at least some of the received health information for that patient (page 3, paragraph 0030, lines 4-7 and paragraph 0031, lines 1-8).
  - c. Upon recording the triage data for each patient, transmitting at least a portion of the recorded triage data to a computer for one of a plurality of regional repositories automatically and in at least near real-time, the computer for each of the regional repositories receiving triage data from a computer for each of a plurality of the health care facilities (page 5, paragraph 0047, lines 5-10 and paragraph 0048, lines 2-7).
  - d. Transmitting triage data to a computer for a centralized recipient from the computers for regional repositories automatically and in at least near real time with its receipt from the computers for the health care facilities (page 5, paragraph 0048, lines 2-7).
  - e. Analyzing the triage data and determining, based on the analysis, whether a possible bio-emergency exists (page 5, paragraph 0047, lines 5-10).

- f. Communicating, from the centralized recipient, information regarding the possible bio-emergency to at least one or more of the regional repositories, one or more health care facilities, and other institutions having an interest in responding to a possible bio-emergency (page 5, paragraph 0048, lines 1-7)
27. As per claim 22, the method of claim 21 is as described above. Reference A further teaches:
- a. Compiling the triage data for individual patients to generate volumetric triage data (page 5, paragraph 0051, lines 6-8).
- b. Comparing the volumetric triage data with a predetermined threshold; and transmitting a warning in response to said comparing step (page 5, paragraph 0051, lines 6-17);
28. As per claim 23, the method of claim 22 is as described above. Reference A further teaches compiling step is performed by the computer for the regional repositories (page 5, paragraph 0045, lines 1-10; the examiner interprets the database to be the same as regional repository), and the comparing step is performed by the computer for the centralized recipient (page 5, paragraph 0048, lines 1-10; the examiner interprets designated authorities to be the same as centralized recipients).

### ***Response to Arguments***

1. Applicant's arguments filed for claims 1-23 have been fully considered but they are not persuasive.
2. The applicant's evidence as discussed above fails to show conception of the invention prior to the effective dates of the applied references.

***Conclusion***

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHEETAL R. RANGREJ whose telephone number is (571) 270-1368. The examiner can normally be reached on M-F 8:30-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry O'Connor can be reached on (571) 272-6787. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or (571) 272-1000.

S. R. R./  
Examiner, Art Unit 3686  
June 2, 2010

/Gerald J. O'Connor/  
Supervisory Patent Examiner  
Group Art Unit 3686